

Master Contract Number

T01-MST-004

for

**Information Technology
Research and Advisory Services**

Between the

State of Washington

DEPARTMENT OF INFORMATION SERVICES

and

Faulkner Information Services

Effective Date: April 30, 2001

**Master Contract
Table of Contents**

1.	Definitions	2
Contract Term		
2.	Term	3
3.	Survivorship.....	4
Pricing, Invoice and Payment		
4.	Pricing	4
5.	Taxes	4
6.	Invoice and Payment	4
7.	Overpayment to Vendor	5
8.	Advance Payment Prohibited.....	5
Vendor's Responsibilities		
9.	Product Ownership.....	5
10.	License Grant.....	6
11.	Mandatory Requirements and Desired Options	6
12.	Change of Services or Products	6
13.	Web Site Support Services	6
14.	Product Support Services.....	7
15.	Quarterly Reports.....	7
16.	Protection of State's Confidential Information.....	7
17.	Vendor Commitments, Warranties and Representations	8
Purchaser's Authority and Responsibilities		
18.	Purchaser Use of Master Contract.....	8
19.	Export Restrictions.....	8
Contract Administration		
20.	Legal Notices	8
21.	Purchaser Project Manager	9
22.	Purchaser Contract Administrator.....	9
23.	Vendor Account Manager.....	9
24.	Section Headings, Incorporated Documents and Order of Precedence	10
25.	Entire Agreement	10
26.	Additional Services and Software	11
27.	Authority for Modifications and Amendments.....	11
28.	Independent Status of Vendor.....	11
29.	Governing Law	11
30.	Subcontractors	11
31.	Assignment	12
32.	Publicity.....	12
33.	Review of Vendor's Records	12
General Provisions		
34.	Patent and Copyright Indemnification	13
35.	Save Harmless.....	14
36.	Insurance.....	14
37.	Industrial Insurance Coverage	15
38.	Licensing Standards	15

Table of Contents, Cont'd.

39.	OSHA/WISHA	15
40.	UCC Applicability	16
41.	Compliance with Civil Rights Laws	16
42.	Severability	16
43.	Waiver	16
44.	Treatment of Assets	16
45.	Vendor's Proprietary Information	17

Disputes and Remedies

46.	Disputes	17
47.	Attorneys' Fees and Costs	18
48.	Non-Exclusive Remedies	18
49.	Failure to Perform	18
50.	Limitation of Liability	18

Contract Termination

51.	Termination for Default	19
52.	Termination for Convenience	20
53.	Termination for Withdrawal of Authority	20
54.	Termination for Non-Allocation of Funds	20
55.	Termination for Conflict of Interest	20
56.	Termination Procedure	20

Activity Reporting and Administration Fee

57.	DIS Master Contract Administration Fee and Collection	21
58.	Master Contract Activity Reporting	21
59.	Failure to Remit Reports/Fees	22

Contract Execution

60.	Authority to Bind	22
61.	Counterparts	23

Schedules

Schedule A: *Authorized Product and Price List*

Exhibits

Exhibit A: *DIS Request for Qualifications and Quotations*

Exhibit B: *Vendor's Response to DIS Request for Qualifications and Quotation*

Note: *Exhibits A and B are not attached but are available upon request from the Purchaser Contract Administrator*

Master Contract Number T01-MST-004

Terms and Conditions for

Information Technology Research and Advisory Services

Parties

This Master Contract is entered into by and between the state of Washington acting through the **Department of Information Services**, an agency of Washington State government (hereinafter "DIS") located at 1110 Jefferson St SE, Olympia, Washington 98504-2445, and **Faulkner Information Services** a corporation licensed to conduct business in the state of Washington, (hereinafter "Vendor") located at 7905 Browning Road, Pennsauken, New Jersey for the purpose of providing Internet-based access to information technology research and advisory services.

Recitals

The state of Washington acting by and through DIS conducted an open, competitive acquisition process and issued a Request for Qualifications and Quotation, (hereafter "RFQQ") dated February 27, 2001, Exhibit A, for the purpose of acquiring Internet-based access to information research and advisory services in accordance with its authority under chapter 43.105 RCW.

Faulkner Information Services submitted a timely Response to the DIS RFQQ dated March 12, 2001, Exhibit B.

DIS evaluated all Responses properly submitted in response to the above-referenced RFQQ and has identified Faulkner Information Services as an apparently successful Vendor.

DIS has determined that entering into a Master Contract with Faulkner Information Services will meet Purchaser's needs and will be in the Purchaser's best interest.

NOW THEREFORE, DIS hereby awards to Faulkner Information Services this Master Contract for Internet-based information technology research and advisory services (hereinafter "Products" and "Services") to Purchasers at the prices set forth on Schedule A in accordance with the terms and conditions of this Master Contract.

This Master Contract is an Optional Use Contract that neither financially binds the State nor otherwise obligates the State to purchase any Products or Services hereunder. Nor does this Master Contract prevent the State from purchasing the same or similar Products and Services from other sources, *provided that*, all legal acquisition requirements are satisfied. This Master Contract is not for personal use.

1. Definitions

"Business Days and Hours" shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

"Confidential Information" shall mean information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, or agency security data.

"DIS Contract Administrator" shall mean the person designated by DIS as responsible for the maintenance and administration of this Master Contract, notices, reports and any other pertinent documentation or information. The DIS Contract Administrator may also conduct periodic performance or financial audits related to this Master Contract.

"DIS Contracting Officer" shall mean the Director of the Department of Information Services or the person(s) to whom signature authority has been delegated in writing.

"Effective Date" shall mean the first date this Master Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Master Contract.

"License" shall mean the rights granted to Purchaser to use the Products that are purchased under this Master Contract.

"Master Contract" shall mean this document, all schedules and exhibits, and all amendments hereto.

"Order" or "Order Document" shall mean any official document and attachments thereto specifying the Products and/or Services to be purchased or licensed from Vendor under this Master Contract.

"Price(s)" shall mean charges, costs, rates, and/or fees charged for Products and Services under this Master Contract and shall be paid in United States dollars.

"Products" shall mean those items and services available under this Master Contract, as set forth in Schedule A.

"Purchaser" shall mean DIS and those governmental or nonprofit entities who have entered into an Interlocal Agreement or Customer Service Agreement with the Department of Information Services.

"Purchaser Contract Administrator" shall mean that person designated by Purchaser to administer this Master Contract on behalf of Purchaser.

"Purchaser Project Manager" shall mean the person designated by Purchaser who is assigned as the primary contact person whom Vendor's Account Manager shall work with for the duration of this Master Contract and as further defined in section titled **Purchaser Project Manager**.

"RCW" shall mean the Revised Code of Washington.

"RFQQ" shall mean the Request for Qualifications and Quotation used as a solicitation document in this procurement, as well as all amendments and modifications thereto, Exhibit A.

"Response" shall mean Vendor's Response to DIS' Request for Qualifications and Quotation for Information Technology Research and Advisory Services, Exhibit B.

"Schedule A: Authorized Product and Price List" shall mean the attachment to this Master Contract that identifies the Products, Services and their corresponding Prices, available under this Master Contract.

"Services" shall mean those services related to the Products being acquired, that are appropriate to the scope of this Master Contract.

"Specifications" shall mean the technical and other specifications set forth in the RFQQ, Exhibit A, and any additional specifications set forth in Vendor's Response, Exhibit B, collectively.

"State" shall mean DIS, any division, section, office, unit or other entity of DIS or any of the officers or other officials lawfully representing DIS. State may also include Purchaser.

"Subcontractor" shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Master Contract under a separate contract with Vendor. The term "Subcontractor" means Subcontractor(s) of any tier.

"Vendor" shall mean Faulkner Information Services, its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity providing Products or performing Services under this Master Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Master Contract.

"Vendor Account Manager" shall mean a representative of Vendor who is assigned as the primary contact person whom DIS or the Purchaser Project Manager shall work with for the duration of this Master Contract and as further defined in the section titled **Vendor Account Manager**.

"Vendor Contracting Officer" shall mean the Vendor Officer with signature authority, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Vendor Contracting Officer acting within the limits of his/her authority.

Contract Term

2. Term

2.1. **Initial Term.** The initial term for purchases under this Master Contract shall be two (2) years, commencing upon the Effective Date.

2.2. **Subsequent Terms.** The term of this Master Contract may be extended by two (2) additional one (1) year terms, *provided that*, the extensions shall be at the option of DIS and shall be effected by DIS giving written notice of its intent to extend this Master Contract to Vendor not less than thirty (30) days prior to the expiration of the then-current Contract term and Vendor accepting such extension prior to the expiration of the then-current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

3. Survivorship

All license and purchase transactions executed pursuant to the authority of this Master Contract shall be bound by all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Master Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Master Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Master Contract shall so survive. In addition, the terms of the sections titled **Protection of Purchaser's Confidential Information, Product Ownership, Publicity, Patent and Copyright Indemnification, Disputes, and Limitation of Liability**, shall survive the termination of this Master Contract.

Pricing, Invoice and Payment

4. Pricing

- 4.1. Vendor agrees to provide the Products and Services at the Prices set forth in the *Authorized Product and Price List* attached as Schedule A to this Master Contract, except that the first license seat for FACCTS shall be at a price of \$5,000. Such prices may not be increased during the term of this Master Contract. No other costs shall be payable to Vendor for implementation of Vendor's Response, except for the DIS Master Contract Administration Fee.
- 4.2. If Vendor reduces its Prices for any of the Products or Services during the term of this Master Contract, Purchaser shall have the immediate benefit of such lower Prices for new purchases. Vendor will send notice to the DIS Contract Administrator with the reduced prices within fifteen (15) calendar days of the reduction taking effect.
- 4.3. Vendor agrees all the prices, terms, warranties, and benefits provided in this Master Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing under similar terms. If Vendor shall, during the term of this Master Contract, enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Master Contract, Vendor shall be obligated to provide the same to Purchaser for subsequent purchases.

5. Taxes

Purchaser will pay sales and use taxes imposed on the Products or Services at Purchaser's local rate. Vendor shall pay all other taxes including, but not limited to, Washington Business and Occupation Taxes, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. Purchaser, as an agency of the Washington State government, is exempt from property tax.

6. Invoice and Payment

- 6.1. Vendor shall submit properly itemized invoices to Purchaser. Invoices shall provide and itemize the following, as applicable:
 - a) Vendor's name and address and remittance address, if different, and phone number;
 - b) Purchaser's name and address, and Order Document number;
 - c) This Master Contract number (T01-MST-004);

- d) Description of Products, including price and quantity ordered;
 - e) Description of Service, including price and period of performance;
 - f) Date of delivery and/or date of installation;
 - g) Applicable discounts;
 - h) Total invoice price, excluding sales tax;
 - i) DIS Master Contract Administration Fee;
 - j) Sales or other applicable taxes;
 - k) Total invoice price; and
 - l) Payment terms including any available prompt payment discounts.
- 6.2. Payments shall be due within thirty (30) calendar days after the receipt and acceptance of such Products and Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 6.3. If Vendor is employing Subcontractors who are Minority/Women Business Enterprises (MWBE), with each invoice for payment Vendor shall provide Purchaser an *Affidavit of Amounts Paid*, specifying the amounts paid to each certified MWBE under the Master Contract.
- 6.4. Incorrect or incomplete invoices will be returned by Purchaser to Vendor for correction and reissue.
- 6.5. This Master Contract number (T01-MST-004) shall appear on all invoices, bills of lading, packages, and correspondence relating to this Master Contract. Purchaser shall not honor drafts, or accept goods on a sight draft basis.
- 6.6. If Purchaser fails to make timely payment, Vendor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1.00). Payment will not be considered late if a check or warrant is postmarked within thirty (30) calendar days of accepting the Products or Services or receipt of Vendor's properly prepared invoice, whichever is later.

7. Overpayment to Vendor

Vendor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Master Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, Purchaser may charge Vendor one percent (1%) per month on the amount due, until paid in full.

8. Advance Payment Prohibited

No advance payment shall be made for the Products and Services furnished by Vendor under this Master Contract.

Vendor's Responsibilities

9. Product Ownership

Vendor shall maintain all title, copyright, and other proprietary rights in the Products. Purchaser does not acquire any rights, express or implied, in the Products, other than those specified in this Master Contract. Vendor hereby warrants and represents to Purchaser that Vendor is the owner

of the Products accessible hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Products provided by Vendor through this Master Contract without violating any rights of any third party worldwide. Vendor represents and warrants that Vendor has the right to license the Products to Purchaser as provided in this Master Contract; and that Purchaser's use of the Products within the terms of this Master Contract will not infringe upon any copyright, patent, trademark or other intellectual property right worldwide or violate any third party's trade secret, contract or confidentiality rights worldwide. Vendor represents and warrants that: (i) Vendor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that any Product infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Vendor has no actual knowledge that any Product infringes upon any patents, copyrights, or trade secrets of any third party.

10. License Grant

Vendor grants Purchaser a License to use all Products accessible under this Master Contract for Purchaser's business use. The License granted entitles Purchaser to make a copy of the Products for Purchaser's archival use and to make a copy of each spreadsheet, graphic, table, or portion of text contained in the Products for internal presentation purposes provided Vendor's copyright notice is attached thereto.

11. Mandatory Requirements and Desired Options

The mandatory RFQQ Requirements and Desired Options of Vendor's Response are incorporated into and are essential substantive terms of this Master Contract. Products and Services provided under this Master Contract shall meet or exceed all of the mandatory requirements of the RFQQ and desired options in Vendor's Response.

12. Change of Services or Products

Vendor shall provide thirty (30) calendar days written notice to DIS Contract Administrator and Purchaser Contract Administrator for any addition, cancellation or reorganization of any Services or Products. Vendor may not increase the Prices for any additional Services or Products or reorganization of Services or Products during a then current term of the Master Contract. If a Service or Product will no longer be offered by Vendor during the term of the Master Contract, Vendor shall offer a substitute Product or Service or shall provide a prorated refund or shall reduce the listed Prices. DIS shall have the sole discretion as to the selection of the remedies for cancellation of any Product or Service.

13. Web Site Support Services

Vendor shall make the online research and advisory services available 24 hours a day, seven days a week, 365 days a year. To assist Purchaser in accessing the online services, Vendor shall provide the following Web Site Support Services:

- a) Vendor shall provide Web Site Support Services for reporting unavailability and trouble shooting problems. Vendor's Web Site Support Services shall be a local telephone number to a local representative or a toll free telephone number to assist in accessing online products.
- b) Vendor shall provide a response to request for assistance within two (2) Business Hours of the request being made.

14. Product Support Services

Vendor shall make available advisory services to assist Purchaser in understanding and using the online Products and Services. Vendor shall provide the following Product Support Services:

- a) Vendor shall provide a direct point of contact who Purchaser may request assistance with Vendor's Products, its contents and use. Vendor's Product Support Services shall be a local telephone number to a local representative or a toll free telephone number (800-843-0460) and an email address (customerservice@faulkner.com) to assist in answering inquiries regarding Vendor's Products.
- b) Vendor shall provide a response to request for assistance within forty-eight (48) Business Hours of the request being made.

15. Quarterly Reports

Vendor shall provide Purchaser a Quarterly Report regarding the use of Vendor's Products and Services. The Quarterly Report shall be sent to the Purchaser Contract Administrator and shall include the following information about activities under this Master Contract during the preceding quarter:

- a) Number of users;
- b) Number of Products or reports accessed;
- c) Number of topics accessed; and
- d) Analysts contacted.

16. Protection of State's Confidential Information

- 16.1. Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Master Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, or agency security data. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Master Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Master Contract, and not to release or disclose it to any other party. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 16.2. Immediately upon expiration or termination of this Master Contract, Vendor shall, at Purchaser's option: (i) certify to Purchaser that Vendor has destroyed all Confidential Information, or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Vendor to protect Purchaser's Confidential Information.
- 16.3. Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Master Contract; why the Confidential Information was received; who received, maintained and used the Confidential Information; the purposes for which the Confidential Information was received; and the final disposition

of the Confidential Information. Vendor's records shall be subject to inspection, review or audit in accordance with **Review of Vendor's Records**.

- 16.4. Purchasers may use any reasonable procedures, such as salting databases, to determine how Vendor and Subcontractors use Confidential Information obtained through performance of this Master Contract.
- 16.5. Violation of this section by Vendor or its Subcontractors may result in termination of this Master Contract, monetary damages, or penalties.

17. Vendor Commitments, Warranties and Representations

Any written commitment by Vendor within the scope of this Master Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of this Master Contract. For purposes of this Master Contract, a commitment by Vendor which shall be in writing includes: (a) Prices, discounts, and options committed to remain in force over a specified period of time; and, (b) any warranty or representation made by Vendor in its Response or contained in any literature, descriptions, drawings or specifications accompanying or referred to in its Response or used to effect the sale to Purchaser as to Product or Services within the scope of this Master Contract.

Purchaser's Authority and Responsibilities

18. Purchaser Use of Master Contract

- 18.1. This Master Contract may be used by authorized Purchasers only and is not for personal use. Reference of the Master Contract Number and/or Purchaser's signature on the Order Document signifies agreement to comply with such restrictions on the use of covered Products and Service. Failure to abide by these restrictions may result in the Purchaser forfeiting the right to make future purchases under this or other Master Contracts.
- 18.2. Purchaser shall comply with **Export Restrictions** and **License Grant** and the notice requirements set forth in the provision titled **Vendor's Proprietary Information**. Reference of this Master Contract Number and/or Purchaser's signature on the Order Document signifies agreement to comply with Vendor's software license terms, export restrictions and protection of Vendor's confidential or proprietary information.

19. Export Restrictions

Purchaser shall not transport or transmit, directly or indirectly, the software or any technical data received from Vendor, nor the direct product derived therefrom, outside the United States or Canada without Vendor's prior written consent and without complying with all export laws and regulations of the United States.

Contract Administration

20. Legal Notices

- 20.1. Any notice or demand or other communication required or permitted to be given under this Master Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-

class mail, postage prepaid, via facsimile or by electronic mail, to the parties at the physical and e-mail addresses provided in this section. For purposes of complying with any provision in this Master Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Vendor at:

Faulkner Information Services
Attn: **Barbara Forkel**

7905 Browning Road
Pennsauken, NJ 08109
Fax number: (856-662-0905)

To DIS at:

State of Washington
Department of Information Services
Attn: **TSD Contract Administrator**
PO Box 42445
512 - 12th Avenue SE
Olympia, WA 98504-2445
Fax number: (360) 664-0711

or to **Purchasers** at the address and fax number listed on their purchase order.

- 20.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 20.3. In the event that a subpoena or other legal process commenced by a third party, in any way concerning the Product or Services provided pursuant to this Master Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

21. Purchaser Project Manager

Purchaser appoints Mary Lou Griffith as the Purchaser Project Manager for Orders placed pursuant to this Master Contract and will provide oversight of the activities conducted hereunder. Purchaser Project Manager will be the principal contact for Vendor concerning Purchaser's Order under this Master Contract. Purchaser shall notify Vendor, in writing, when there is a new Purchaser Project Manager assigned to purchases under this Master Contract.

22. Purchaser Contract Administrator

Purchaser appoints the TSD Contract Administration as Purchaser Contract Administrator for Orders placed pursuant to this Master Contract and will provide oversight of the activities conducted hereunder. Purchaser Contract Administrator will manage Orders placed under this Master Contract on behalf of Purchaser and will be the principal point of contact for Vendor concerning Vendor's performance under this Master Contract. Purchaser shall notify Vendor, in writing, when there is a new Purchaser Contract Administrator assigned to purchases under this Master Contract.

23. Vendor Account Manager

Vendor shall appoint an Account Manager for the State's account. Vendor Account Manager will be the principal point of contact for the DIS Contract Administrator and Purchasers concerning

Vendor's performance hereunder. Vendor Account Manager will also serve as the focal point for business matters, support coordination, and administrative activities. Vendor shall notify Purchaser Project Manager, in writing, when there is a new Vendor Account Manager assigned to this Master Contract. The Vendor Account Manager Information is:

Vendor Account Manager: Donna L. Ingraham		
Address: 7905 Browning Road, Pennsauken, NJ 08109		
Phone: 856-662-2070 Ext. 158	Fax: 856-662-0905	E-mail: dingraham@faulkner.com

24. Section Headings, Incorporated Documents and Order of Precedence

- 24.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 24.2. Each of the documents listed below is incorporated by this reference into this Master Contract as though fully set forth herein.
- a) Schedule A – Authorized Product and Price List;
 - b) Exhibit A – State of Washington, DIS Request for Qualifications and Quotation, dated February 27, 2001;
 - c) Exhibit B – Vendor's Response, dated March 12, 2001, including all written information provided with Vendor's Response;
 - d) The terms and conditions contained on Purchaser's Order Documents, if used; and,
 - e) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, and other written representations Vendor made available to Purchaser and used to effect the sale of Product and Services to Purchaser.
- 24.3. In the event of any inconsistency in this Master Contract, it shall be resolved in the following order of precedence:
- a) Applicable federal and state statutes, laws, and regulations;
 - b) Provisions of this Master Contract (T01-MST-004);
 - c) Schedule A - Authorized Product and Price List;
 - d) Exhibit A - State of Washington, DIS Request for Qualifications and Quotation, dated February 27, 2001;
 - e) Exhibit B – Vendor's Response, dated March 12, 2001, including all written information provided with Vendor's Response; and
 - f) The terms and conditions contained on Purchaser's Order Documents, if used; and
 - g) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, and other written representations Vendor made available to Purchaser and used to effect the sale of Product and Services to Purchaser.

25. Entire Agreement

This Master Contract sets forth the entire agreement between the parties hereto with respect to the subject matter hereof and except as provided in the section **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained

in this Master Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Master Contract will be effective without the written consent of both parties.

26. Additional Services and Software

Additional Products and/or Services, which are determined by the State to be appropriate to the scope of this Master Contract, may be added to this Master Contract (Schedule A hereto) by an instrument in writing, signed by both parties. Such writing shall include a specific description of the additional Products and/or Services, pricing and additional terms and conditions as relevant.

27. Authority for Modifications and Amendments

No modification, amendment, alteration, addition or waiver of any section or condition of this Master Contract shall be effective or binding unless in writing and signed by authorized representatives of Vendor and DIS.

28. Independent Status of Vendor

In the performance of this Master Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever, nor will Vendor make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

29. Governing Law

This Master Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transaction Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Master Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

30. Subcontractors

Vendor may, with prior written permission from the DIS Contract Administrator, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce Vendor's liability to Purchaser or DIS for any breach in the performance of Vendor's duties. For purposes of this Master Contract, Vendor agrees that all Subcontractors shall be deemed agents of Vendor. Vendor further agrees to hold Purchaser or DIS harmless from acts or omissions of Vendor's Subcontractors, their agents, or employees subject to the limitations set forth in the **Limitation of Liability** section of this Master Contract. Purchaser or DIS shall not be liable for any loss or damage resulting from personal injury, physical loss, harassment of employees, or violations of the **Patent and Copyright Indemnification** sections of this Master Contract occasioned by the acts or omissions of

Vendor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification** section of this Master Contract shall apply to all Subcontractors.

31. Assignment

- 31.1. With the prior written consent of DIS, which consent shall not be unreasonably withheld, Vendor may assign this Master Contract including the proceeds hereof: *provided that*, such assignment shall not operate to relieve Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser or DIS that may arise from any breach of this Master Contract, its supplements, or warranties made herein, including but not limited to rights of setoff.
- 31.2. With the prior written consent of Vendor, which consent shall not be unreasonably withheld, DIS may assign this Master Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington: *provided that*, such assignment shall not operate to relieve DIS of any of its duties and obligations hereunder.

32. Publicity

- 32.1. The award of this Master Contract to Vendor is not in any way an endorsement of Vendor or Vendor's products or services by Purchaser and shall not be so construed by Vendor in any advertising or other publicity materials.
- 32.2. Vendor agrees to submit to DIS, all advertising, sales promotion, and other publicity matters relating to this Master Contract or any Product furnished by Vendor wherein DIS or Purchaser's name is mentioned, language is used, or Internet linkages are provided from which the connection of DIS or Purchaser's name therewith may, in DIS's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion matter, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS prior to such use.

33. Review of Vendor's Records

- 33.1. Vendor and its Subcontractors shall maintain books, records, documents and other documents relating to this Master Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Master Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Master Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- 33.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser's Contract Administrator, Office of Financial Management and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable. During this Master Contract's term, Vendor shall provide access to these items within Thurston County. During the six (6) year period after the Master Contract term, delivery of and access to these items will be at no cost to the State. Vendor shall be

responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.

- 33.3. The records retention and review requirements of this section shall be incorporated by Vendor in any of its subcontracts.
- 33.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Master Contract is calculated or derived from these factors.

General Provisions

34. Patent and Copyright Indemnification


- 34.1. Vendor shall, at its expense, defend or settle any claim against Purchaser that any Products or Work Products supplied hereunder, or Purchaser's use of the Products or Work Products within the terms of this Master Contract, infringe any patent, copyright, utility model, industrial design, mask work, trade secret, or trademark or similar proprietary right of a third party worldwide. Vendor shall pay resulting costs, damages and attorneys' fees finally awarded provided that Purchaser:
 - a) Promptly notifies Vendor in writing of the claim; and
 - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 34.2. Vendor will pay all costs of such defense and settlement and any costs and damages awarded by a court or incurred by Purchaser. If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor, at its option and expense, either to procure for Purchaser the right to continue using the Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product and refund the amount paid by Purchaser for the Product. No termination charges will be payable on such returned Product, and the Purchaser will pay only those charges which were payable prior to the date of such return.
- 34.3. Vendor has no liability for any claim of infringement arising solely from:
 - a) Vendor's compliance with any designs, specifications or instructions of the Purchaser;
 - b) Modification of the Product by Purchaser or a third party without the prior knowledge and approval of Vendor; or
 - c) Use of the Product in a way not specified by Vendor;unless the claim arose against Vendor's Product or Services independently of any of these specified actions.

35. Save Harmless

Vendor shall defend, indemnify, and save Purchaser harmless from and against any damage, cost, or liability, including reasonable attorneys' fees resulting from such claim, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Vendor's obligation to defend, indemnify, and save harmless Purchaser shall not be eliminated or reduced by any alleged concurrent Purchaser negligence.

36. Insurance

36.1. Vendor shall, during the term of this Master Contract, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Master Contract, Vendor shall provide written notice of such to DIS within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS's sole option, result in this Master Contract's termination.

36.2.  The minimum acceptable limits shall be as indicated below, with no deductible, for each of the following categories;

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate; and
- b) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3,000,000; and
- c) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon subsection 36.3 below, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and
- d) Crime Coverage with a deductible not to exceed \$1 million, conditioned upon subsection 36.3 below, and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

36.3. For Professional Liability Errors and Omissions coverage and Crime Coverage, Vendor shall: (i) continue such coverage for six (6) years beyond the expiration or termination of this Contract, naming Purchaser as an additional insured and providing Purchaser with certificates of insurance on an annual basis; (ii) within thirty (30) days of execution of this Contract provide for DIS's benefit an irrevocable stand-by letter of credit, or other financial assurance acceptable to Purchaser, in the amount of \$1 million, during the initial and any subsequent terms of this Master Contract and for six (6) years beyond the expiration or termination of this Master Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at DIS's sole option, in the event Vendor fails to do so. In addition, such irrevocable stand-by letter of credit shall provide for payment of any deductible on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of

such policy as though there were no deductible. "Irrevocable stand-by letter of credit" as used in this Master Contract means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by Purchaser (the beneficiary) of a written demand therefor.

- 36.4. Vendor shall pay premiums on all insurance policies. Such insurance policies shall name DIS as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Master Contract number T01-MST-004 and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.
- 36.5. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 36.6. Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- 36.7. Vendor shall furnish to DIS copies of certificates of all required insurance within thirty (30) calendar days of this Master Contract's Effective Date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DIS's sole option, result in this Master Contract's termination.
- 36.8. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to DIS in this Master Contract.

37. Industrial Insurance Coverage

Prior to performing work under this Master Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Master Contract. Except as prohibited by law, Vendor waives all rights of subrogation against DIS and Purchaser for recovery of damages to the extent they are covered by workers compensation or other insurance required to be purchased by Vendor under this Master Contract. Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of this Master Contract.

38. Licensing Standards

Vendor shall comply with all applicable local, state, and federal licensing requirements and standards necessary in the performance of this Master Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

39. OSHA/WISHA

Vendor represents and warrants that its Products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor further agrees to

indemnify and hold the State harmless from all damages assessed against the State as a result of the failure of the items furnished under this Master Contract to so comply.

40. UCC Applicability

- 40.1. Except to the extent the sections of this Master Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.
- 40.2. To the extent this Master Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.
- 40.3. Notwithstanding the **Section Headings, Incorporated Documents and Order of Precedence** section of this Master Contract, in the event of any clear inconsistency or contradiction between this Master Contract and the UCC, the terms and conditions of this Master Contract take precedence and shall prevail unless otherwise provided by law.

41. Compliance with Civil Rights Laws

During the performance of this Master Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. 12101 *et seq.*; the Americans with Disabilities Act (ADA); and chapter 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Master Contract may be rescinded or terminated in whole or in part under the **Termination for Default** section, and Vendor may be declared ineligible for further Contracts with Purchaser. In addition to the cancellation of this Master Contract, Vendor may be subject to remedies under federal and state law.

42. Severability

The terms and conditions of this Master Contract are declared severable. If any term or condition of this Master Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application.

43. Waiver

Waiver of any breach of any term or condition of this Master Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Master Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties hereto.

44. Treatment of Assets

- 44.1. Title to all property furnished by Purchaser shall remain vested in Purchaser. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement under this Master Contract, other than rental payments, shall pass to and vest in Purchaser. As used in this section **Treatment of Assets**, if the "property" is Vendor's proprietary, copyrighted works, only the applicable license, not title, passes to Purchaser.

- 44.2. Any property of Purchaser furnished to Vendor, unless otherwise provided herein or approved by Purchaser, shall be used only for the performance of this Master Contract.
- 44.3. Vendor shall be responsible for any loss or damage to property of Purchaser which results from willful misconduct or negligence on the part of Vendor or which results from the failure on the part of Vendor to maintain and administer that property in accordance with sound management practices.
- 44.4. Upon loss, destruction, or damage to any Purchaser property, Vendor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 44.5. Vendor shall surrender to Purchaser all Purchaser's property prior to settlement upon completion, termination, or cancellation of this Master Contract.
- 44.6. All references to Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

45. Vendor's Proprietary Information

Vendor acknowledges that Purchaser is subject to chapter 42.17 RCW and that this Master Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Vendor to be confidential or proprietary, must be clearly identified as such by Vendor. To the extent consistent with chapter 42.17 RCW, Purchaser shall maintain the confidentiality of all such information marked confidential or proprietary. If a public disclosure request is made to view Vendor's proprietary information, Purchaser will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, Purchaser will release the requested information on the date specified.

Disputes and Remedies

46. Disputes

- 46.1. In the event a bona fide dispute concerning a question of fact arises between Vendor and Purchaser or DIS and it cannot be resolved between the parties with the aid of the DIS Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 46.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
 - a) If the dispute cannot be resolved after three (3) Business Days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
 - b) The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

- c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

- 46.3. Both parties agree to be bound by the determination of the dispute resolution panel.
- 46.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.
- 46.5. Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 46.6. If the subject of the dispute is the amount due and payable by Purchaser for maintenance services being provided by Vendor, Vendor shall continue providing maintenance pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

47. Attorneys' Fees and Costs

If any party brings litigation to enforce any term, condition, or section of this Master Contract, or as a result of this Master Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with necessary fees, expenses, and costs incurred for such litigation at both trial and appellate levels, as well as subsequent to judgement in obtaining execution thereof.

48. Non-Exclusive Remedies

The remedies provided for in this Master Contract shall not be exclusive but are in addition to all other remedies available under law.

49. Failure to Perform

If Vendor fails to perform any substantial obligation under this Master Contract, Purchaser shall give Vendor written notice of such failure to perform. If, after thirty (30) calendar days from the date of the written notice Vendor still has not performed, then without penalty to Purchaser, Purchaser may withhold all monies due and payable to Vendor until such failure to perform is cured or otherwise resolved.

50. Limitation of Liability

- 50.1. The parties agree that neither Vendor nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. The damages specified in the sections titled **Review of Vendor's Records**, **OSHA/WISHA**, and **Termination for Default** are not consequential, incidental, indirect, or special damages as those terms are used in this section.
- 50.2. Neither Vendor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case

the delays shall be beyond the reasonable control and without fault or negligence of Vendor, Purchaser, or their respective Subcontractors.

- 50.3. If delays are caused by a Subcontractor without its fault or negligence, neither Vendor nor Purchaser shall be liable for damages for delays, unless the Software or Services were obtainable on comparable terms from other sources in sufficient time to permit Vendor or Purchaser to meet its required performance schedule.
- 50.4. Neither party shall be liable for personal injury or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Termination

51. Termination for Default

- 51.1. If Vendor violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its obligations under this Master Contract, the DIS Contract Administrator or the affected Purchaser shall give Vendor written notice of the failure or violation, and the failure or violation shall be corrected by Vendor within thirty (30) calendar days or as otherwise mutually agreed. If Vendor's failure or violation is not so corrected, Purchaser, at its option, may withhold all monies due and payable to Vendor until such failure to perform is cured or otherwise resolved, or pursue immediate termination of this Master Contract, as appropriate. In such event, this Master Contract may be terminated immediately by written notice from the DIS Contracting Officer to Vendor. The option to thus terminate this Master Contract shall be at the sole discretion of DIS.
- 51.2. In the event DIS terminates this Master Contract, DIS or Purchaser shall have the right to procure the Product and Services that are the subject of this Master Contract on the open market and Vendor shall be liable for all damages including, but not limited to:
 - a) The cost difference between the original Master Contract price for the Product and Services and the replacement costs of such Product and Services acquired from another vendor; and
 - b) If applicable, all administrative costs directly related to the replacement of the Master Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs; and,
 - c) Any other costs to Purchaser or DIS resulting from Vendor's breach.

Purchaser or DIS shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe Purchaser or DIS for Vendor's default.

- 51.3. If either DIS or Purchaser violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its performance obligations under this Master Contract, then Vendor shall give the DIS Contracting Officer or Purchaser, as appropriate, written notice of such failure, which shall be corrected by DIS or Purchaser within thirty (30) calendar days. If such failure to perform is not so corrected, Purchaser's Order may be terminated by written notice from Vendor to Purchaser or, if appropriate, this Master Contract may be terminated immediately by written notice from Vendor to the DIS Contracting Officer.

- 51.4. If it is determined the failure to perform is without the defaulting party's control, fault, or negligence; the termination shall be deemed a Termination for Convenience.
- 51.5. This section shall not apply to any failure to perform that results from the willful or negligent acts or omissions of the aggrieved party.

52. Termination for Convenience

- 52.1. When it is in the best interest of Purchaser or DIS, the DIS Contracting Officer may terminate this Master Contract, in whole or in part, by fourteen (14) calendar days written notice to Vendor. Invocation of the **Termination for Withdrawal of Authority** or **Termination for Non-Allocation of Funds** sections shall be deemed a Termination for Convenience but will not require such fourteen (14) calendar days written notice.
- 52.2. If this Master Contract is so terminated, Purchaser is liable only for payments required by the terms of this Master Contract for Software and Services received and accepted by Purchaser prior to the effective date of termination.

53. Termination for Withdrawal of Authority

In the event that the authority of Purchaser or DIS to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Master Contract and prior to normal completion, DIS may terminate this Master Contract under the **Termination for Convenience** section. No penalty shall accrue to Purchaser or DIS for exercising its rights under this section. This section shall not be construed to permit DIS to terminate this Master Contract to acquire similar Software or Services from a third party.

54. Termination for Non-Allocation of Funds

If funds are not allocated to continue this Master Contract in any future period, Purchaser or DIS will not be obligated to pay any further charges for Product or Services, including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. In such case, Purchaser or DIS agrees to notify Vendor at the earliest possible opportunity of such non-allocation. No penalty shall accrue to Purchaser or DIS for exercising its rights under this section. This section shall not be construed to permit Purchaser or DIS to terminate this Master Contract to acquire similar Product or Services from a third party.

55. Termination for Conflict of Interest

DIS may terminate this Master Contract by written notice to Vendor if DIS determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Master Contract is terminated for conflict of interest, DIS shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Master Contract.

56. Termination Procedure

- 56.1. In addition to the procedures set forth below, if Purchaser terminates this Master Contract, Vendor shall follow any procedures Purchaser specifies in Purchaser's notice of termination.

- 56.2. Upon termination of this Master Contract, Purchaser, in addition to any other rights provided in this Master Contract, may require Vendor to deliver to Purchaser any Purchaser property, Products, or Work Products specifically produced or acquired for the performance of such part of this Master Contract as has been terminated. The sections for the **Treatment of Assets** shall apply in such property transfer.
- 56.3. Unless otherwise provided herein, Purchaser shall pay to Vendor the agreed-upon price, if separately stated, for the Products or Services received and accepted by Purchaser: **PROVIDED**, That in no event shall Purchaser pay to Vendor an amount greater than Vendor would have been entitled to if this Master Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Master Contract. Purchaser may withhold from any amounts due Vendor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 56.4. Vendor shall pay the amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of termination. If Vendor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.

Activity Reporting and Administration Fee

57. DIS Master Contract Administration Fee and Collection

- 57.1. All purchases made under this Master Contract are subject to a DIS Master Contract Administration Fee, collected by Vendor and remitted to DIS.
- 57.2. The Master Contract Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax.
- 57.3. The Master Contract Administration Fee shall be invoiced by Vendor to all Purchasers as a separate detailed line item on Purchaser's invoice.
- 57.4. Vendor shall remit the Master Contract Administration Fee directly to the DIS Contract Administrator along with the Master Contract Activity Report.

58. Master Contract Activity Reporting

- 58.1. Vendor shall submit to the DIS Contract Administrator a quarterly Activity Report of all software and Services purchases made under this Master Contract. The report shall identify:
- a) This Master Contract number (T01-MST-004);
 - b) Each Purchaser making purchases during that quarter;
 - c) The total invoice price, excluding sales tax for each Purchaser; and,
 - d) The sum of all invoice prices, excluding sales tax, for all Purchasers;
 - e) The DIS Master Contract Administration Fee.
- 58.2. The Activity Report and the DIS Master Contract Administration Fee shall be submitted by the 15th calendar day of the month following the quarter being reported by Vendor. Vendor shall submit this report according to the layout specified by the DIS Contract Administrator.

- 58.3. This report may be corrected or modified by the DIS Contract Administrator with subsequent written notice to Vendor.
- 58.4. Quarterly reports are required even if no activity occurred.

59. Failure to Remit Reports/Fees

- 59.1. Failure of Vendor to remit the Master Contract Activity Report together with the Master Contract Administration Fee may be considered a failure to perform on the part of Vendor, which may result in DIS terminating this Master Contract with Vendor.
- 59.2. Failure of any Purchaser to pay the Master Contract Administration Fee may result in a Purchaser forfeiting its right to purchase from this Master Contract. Vendor shall notify the DIS Contract Administrator when any Purchaser fails to pay the Master Contract Administration Fee.
- 59.3. The DIS Contract Administrator will notify Vendor of any Purchaser who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Vendor to a forfeiting Purchaser may be considered failure to perform by Vendor.
- 59.4. If the performance issues are resolved, DIS, at its option, may reinstate a Vendor's participation or a Purchaser's right to purchase.

Contract Execution

60. Authority to Bind

The signatories to this Master Contract represent that they have the authority to bind their respective organizations to this Contract.

61. Counterparts

This Master Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of the Master Contract signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this Master Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

APPROVED

State of Washington
Department of Information Services

APPROVED

Faulkner Information Services

Michael D. McVicker
Signature

Michael D. McVicker
Print or Type Name

Assistant Director
Title

4/30/01
Date

Barbara Forkel
Signature

BARBARA FORKEL
Print or Type Name

VP Sales & Mktg 4/27/01
Title Date

Approved as to Form

State of Washington,
Office of the Attorney General

Approved as to Form by Chip Holcomb
Sr. Counsel on 5/2/01 - Approval on File
Signature

Print or Type Name

Assistant Attorney General

Title

Date

Vendor's Phone Number: 856-662-2070

Vendor's Fax Number: 856-662-0905

Vendor's UBI Number: 602109494-001

Vendor's Federal Tax ID Number: 22-272033

Minority or Woman Owned Business Enterprise

Yes _____ No ☒ X
(Certification Number)

Schedule A

Authorized Product and Price List

**As of April 30, 2001
For
Master Contract No. T01-MST-004
With
Faulkner Information Services**

See separate document.

Amendment 01-01
Master Contract T01-MST-004
for
Research and Advisory Services

In accordance with Provision 27 (*Authority for Modifications and Amendments*) of Master Contract Number T01-MST-004 ("the Contract"), this Amendment 01-01 is entered into by and between the State of Washington, Department of Information Services ("DIS") and Faulkner Information Services ("Contractor").

The purpose of this Amendment is to modify the insurance provision, under Section 36 of the Contract, titled *Insurance*. Now, therefore, the parties agree to amend the Contract as follows:

1. DIS and Contractor agree to delete the Professional Liability Errors and Omissions insurance requirement set forth in Section 36.2 c) of the Contract, and the Crime Coverage requirement set forth in Section 36.2 d) of the Contract.
2. DIS and Contractor agree that Contractor remains fully and completely liable for all its services provided under the Contract, and that removal of the professional liability coverage requirement and the Crime Coverage requirement in no way reduces Contractor's liability or potential damages thereunder.
3. All other provisions of Master Contract T01-MST-004 shall remain in full force and effect.

This Amendment 01-01 shall be effective as of the date signed by DIS.

Approved

State of Washington,
Department of Information Services



Signature

Michael D. McVicker

Print or Type Name

Assistant Director, DIS/TSD

Title

7/11/01

Date

Approved

Faulkner Information Services



Signature

BARBARA FORKEL

Print or Type Name

Vice President 7/3/01

Title

Date

Amendment 03-02
Master Contract T01-MST-004
for
Research and Advisory Services

In accordance with Provision 27 (*Authority for Modifications and Amendments*) of Master Contract Number T01-MST-004 ("the Contract"), this Amendment 03-02 is entered into by and between the State of Washington, Department of Information Services ("DIS") and Faulkner Information Services ("Contractor").

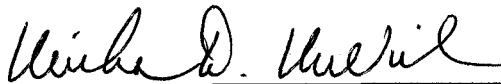
The purpose of this Amendment is to modify the product offering on Schedule A of the Contract, titled *Authorized Product and Price List* because Contractor no longer offers this product. Now, therefore, the parties agree to amend the Contract as follows:

1. DIS and Contractor agree to remove the product "TELEscope" from Schedule A. The current Schedule A will be deleted in its entirety and replaced by the attached Schedule A, which reflects this change.
2. All other provisions of Master Contract T01-MST-004 shall remain in full force and effect.

This Amendment 03-02 shall be effective as of the date signed by DIS.

Approved

State of Washington,
Department of Information Services



Signature

Michael D. McVicker

Print or Type Name

Assistant Director, DIS/TSD

Title

8/2/02

Date

Approved

Faulkner Information Services



Signature

Barbara Forkel

Print or Type Name

VP Sales Marketing

Title

7/17/02

Date

Schedule A

Authorized Product and Price List

**As of July 17, 2002
for
Master Contract No. T01-MST-004
with
Faulkner Information Services**

Vendor is authorized under the above-referenced Master Contract to sell only the Services identified in this Schedule A at the prices set forth therein.

Product: FACCTS, Faulkner's Advisory on Computer and Communications Technologies

Price per seat (user) \$575 for one year

Description of FACTS: FACCTS is a fully searchable, updated web-based management reports library spanning these specialized technology areas: Large, Midrange, Microsystems, Document Management, Imaging, IT Asset Management, Application Development, Strategic Data Management, Data and Voice Networking, Wireless, Electronic Commerce, Internet Strategies and Converging Communications.

FACCTS contains more than a dozen unique report types and several news summary compilations. Report types include: technology tutorials, product selection guides, market trend studies, company profiles, company timelines, service profiles, product face-offs and more. News Summary Compilations include: *Telecom Weeklies*, *News Briefs*, *Corporate Timelines*, *Faulkner Flashes*, and *CyberScape Digests*.

Product: Convergence Quarterly

Price per seat (user): \$500 for one year

Description of Convergence Quarterly: *Convergence Quarterly* is a web-based market report of insight and opinion about technology convergence around the globe. *Convergence Quarterly* focuses on IT, media, and telecommunications convergence issues, trends, and alliances. Each issue of *Convergence Quarterly* provides in-depth analysis and looks at new and emerging technologies and new combinations of companies with different core-competencies through acquisitions, joint ventures, and alliances.

Amendment 03-03
to
Master Contract T01-MST-004
for
Research and Advisory Services

In accordance with Provision 27 (*Authority for Modifications and Amendments*) of Master Contract Number T01-MST-004 ("the Contract"), this Amendment 03-03 is entered into by and between the State of Washington, **Department of Information Services** ("DIS") and **Faulkner Information Services** ("Contractor").

The purpose of this Amendment is to modify the term of the Contract. Now, therefore, the parties agree to amend the Contract as follows:

The current term of Contract T01-MST-006 will expire on April 30, 2003. Pursuant to Provision 2 (*Term*), Contractor and DIS hereby agree to extend the term of the Contract for one additional year, specifically through April 30, 2004

All other provisions of Master Contract T01-MST-006, as previously amended, shall remain in full force and effect.

This Amendment 03-03 shall be effective as of the date signed by DIS.

Approved

State of Washington,
Department of Information Services

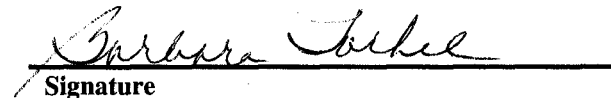

Signature

Michael B. Emans
Print or Type Name

Acting Assistant Director, DIS/TSD 2/11/03
Title Date

Approved

Faulkner Information Services


Signature

BARBARA FURKEL
Print or Type Name

VP 2/13/03
Title Date

Amendment Number 04-04
Master Contract Number T01-MST-004
Research and Advisory Services

In accordance with Provision 27 (*Authority for Modifications and Amendments*) of Master Contract Number T01-MST-004, this Amendment 04-02 is entered into by and between the **State of Washington, Department of Information Services** ("DIS") and Faulkner Information Services ("Contractor").

The purpose of this Amendment is to update the Master Contract Reporting Provision 58 to specify dates Activity Reports and DIS Administrative Fees are due. The parties hereby agree to amend the Contract as follows:

58. Master Contract Activity Reporting

58.1. Contractor shall submit to the DIS Master Contract Administrator a quarterly Activity Report of all purchases made under this Master Contract.

The report shall identify:

- a) This Master Contract number (T01-MST-004);
- b) Each Purchaser making purchases during that quarter;
- c) The total invoice price, excluding sales tax for each Purchaser; and,
- d) The sum of all invoice prices, excluding sales tax, for all Purchasers;
- e) The DIS Master Contract Administration Fee;

58.2. The Activity Reports and the DIS Administration Fee shall be due on a quarterly basis in accordance with the following schedule:

<u>Quarter Ending</u>	<u>Report & Fee Due</u>
March 15	April 15
June 15	July 15
September 15	October 15
December 15	January 15

58.3. This report may be corrected or modified by the DIS Master Contract Administrator with subsequent written notice to Contractor.

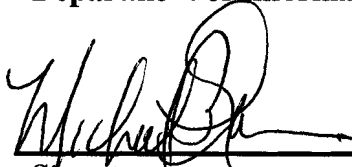
58.4. Quarterly reports are required even if no activity occurred.

58.5. Upon request by DIS, Contractor shall provide the contract information of all Purchasers during the term of the Master Contract in the format requested.

This Amendment 04-04 shall be effective as of the date signed by DIS.

Approved

State of Washington,
Department of Information Services


Signature

Michael B. Emans

Print or Type Name


Assistant Director, TSD

Title

Date 2/9/04

Approved

Faulkner Information Services


Signature

BARBARA FORKEL
Print or Type Name

Vice President
Title

Date 1/26/04

Amendment 04-05
to
Master Contract T01-MST-004
for
Research and Advisory Services

In accordance with Provision 27 (*Authority for Modifications and Amendments*) of Master Contract Number T01-MST-004 ("the Contract"), this Amendment 04-05 is entered into by and between the State of Washington, **Department of Information Services** ("DIS") and **Faulkner Information Services** ("Contractor").

The purpose of this Amendment is to extend the term of the Contract. Therefore, the parties agree to amend the Contract as follows:

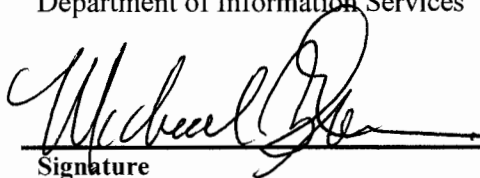
The current term of Contract T01-MST-004 will expire on April 30, 2004. Pursuant to Provision 2 (*Term*), Contractor and DIS hereby agree to extend the term of the Contract for one additional year, specifically through April 30, 2005.

All other provisions of Master Contract T01-MST-004, as previously amended, shall remain in full force and effect.

This Amendment 04-05 shall be effective as of the date signed by DIS.

Approved

State of Washington,
Department of Information Services



Signature

Michael B. Emans

Print or Type Name

Assistant Director, DIS/TSD

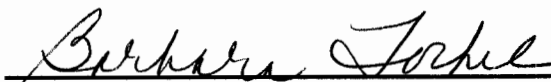
Title

4/5/04

Date

Approved

Faulkner Information Services



Signature

BARBARA FORKE

Print or Type Name

VP

Title

03/18/04

Date